Supreme Court, U. S.
FILED
DEC 4 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 74-1303

CARL D. BISHOP,

Petitioner,

-v.-

W. H. WOOD, CHIEF OF POLICE OF THE CITY OF MARION, NORTH CAROLINA; VICTOR DENTON, CITY MANAGER OF THE CITY OF MARION, NORTH CAROLINA; and THE CITY OF MARION, NORTH CAROLINA, A MUNICIPAL CORPORATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 16, 1975

CERTIORARI GRANTED OCTOBER 14, 1975

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I N D E X - RECORD ON APPEAL

Carl D. Bishop, Appellant,

versus Civil No. SH-72-78

W. H. Wood, Chief of Police,
City of Marion, N.C.,et al, Appellees

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CARL D. BISHOP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	
W. H. WOOD, Chief of Police of the City of Marion, North Carolina; VICTOR DENTON, City Manager of the City of Marion, North Carolina; THE CITY OF MARION, NORTH CAROLINA, A Municipal Corporation,	)	
	)	
Defendants.	)	

Plaintiff, complaining of defendants, alleges and says:

1. Plaintiff is a citizen and resident of Nebo, McDowell County, North Carolina, and is a citizen of the United States.

2. Defendant W. H. Wood is a citizen and resident of Marion, McDowell County, North Carolina, and is the duly

appointed, qualified, and acting Chief of Police of the City of Marion, North Carolina. Defendant Victor Denton is a citizen and resident of Marion, McDowell County, North Carolina, and is the duly appointed, qualified, and acting City Manager of the City of Marion, North Carolina. Defendant City of Marion, North Carolina, is a municipal corporation located in McDowell County, North Carolina, chartered and operating under the laws of the State of North Carolina.

3. Jurisdiction of this action is founded upon 42 U.S.C. 1983, 28 U.S.C. 1343(3), and 28 U.S.C. 1331(a). The amount in controversy exceeds $10,000.00, exclusive of interest and costs.

4. In 1969 plaintiff was employed as a policeman in the police department of the City of Marion, North Carolina. Plain-

tiff acted in this capacity until March 31, 1972. In all respects plaintiff carried out the orders of his superiors, abided by departmental and municipal rules and regulations, conducted himself in accordance with the laws of the State of North Carolina, and handled the duties of his job as a policeman in a thoroughly professional, competent manner.

5. On March 31, 1972, defendant W. H. Wood, Chief of Police of the City of Marion, North Carolina, dismissed plaintiff from his employment. No previous notification of deficiency, reprimand or other warning had been given to plaintiff concerning his conduct or performance of duties. Defendant Victor Denton, City Manager of the City of Marion, North Carolina, approved the dismissal.

6. Defendant W. H. Wood notified

plaintiff in writing, at the plaintiff's request, following his discharge that the dismissal was because of unsatisfactory work and failure to attend the training schools. There is no basis in fact to support either of these reasons. Plaintiff is informed and believes, and so alleges, that the true reason for his dismissal is that plaintiff diligently carried out his duties by making arrests for misdemeanors whenever he found probable cause that the misdemeanors were being committed in his presence, and that he treated the citizens of his community equally without regard to their political or social status.

7. Article II, Section 6 of the Personnel Ordinance of the City of Marion, North Carolina, adopted April 7, 1970, provides:

A permanent employee whose work is not satisfactory over a period of time shall be notified in what way his work is deficient and what he must do if his work is to be satisfactory. If a permanent employee fails to perform work up to the standard of the classification held, or continues to be negligent, inefficient, or unfit to perform his duties, he may be dismissed by the City Manager. Any discharged employee shall be given a written notice of his discharge setting forth the effective date and reasons for his discharge if he shall request such a notice.

8. Plaintiff was not given any advance notice that defendants believed they had grounds to discharge him, and plaintiff was not given a hearing by defendants to determine whether or not there existed sufficient grounds for plaintiff's dismissal as a public employee.

9. At all times material hereto defendants were acting under color of sta-

tute, ordinance, regulation, custom and usage of the State of North Carolina.

10. Defendants' acts herein complained of subjected plaintiff to the deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States, and particularly the right to have notice and hearing in advance of the termination of public employment as required by the Fifth and Fourteenth Amendments to the Constitution of the United States.

11. Plaintiff does not have an adequate remedy at law for the enforcement of the rights asserted in this action. Defendants' conduct has caused irreparable damage and injury to plaintiff.

WHEREFORE, plaintiff prays that the Court:

(a) Enter an injunction, enjoining and restraining defendants to re-employ plaintiff as a policeman of the City of Marion, and to refrain from discharging him or discriminating against him in any way in violation of his rights under the Constitution and laws of the United States.

(b) Award plaintiff damages against defendants consisting of the pay he would have received from March 31, 1972, to the date of judgment.

(c) Tax the costs of this action against defendants.

(d) Grant plaintiff such other and further relief as to the Court may seem

just and proper.

/s/ Norman B. Smith

Attorney for Plaintiff
Norman B. Smith
Smith, Patterson, Follin
& Curtis
816 Southeastern Building
Greensboro, North Carolina
27401
Telephone: 919-275-8603

NORTH CAROLINA

McDOWELL COUNTY

Carl D. Bishop, being first duly sworn, deposes and says that he is the plaintiff in the above-entitled action, that he has read the foregoing complaint and knows the contents thereof, and that said contents are true of his own knowledge, save and except for those matters and things stated therein upon information and belief, and as to such matters and things, he believes said contents to be true.

/s/ Carl D. Bishop
Affiant

Sworn to and subscribed
before me this _____ day of
_____, 1972.

_____ [Duly notarized]
Notary Public

My commission expires:

_____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CARL D. BISHOP, Plaintiff, v. W. H. WOOD, Chief of Police of the City of Marion, North Carolina; VICTOR DENTON, City Manager of the City of Marion, North Carolina; and THE CITY OF MARION, NORTH CAROLINA, A Municipal Corporation, Defendants.	ANSWER AND DEMAND FOR TRIAL BY JURY

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted against any of the defendants named and all defendants, therefore, move that the Complaint be dismissed.

SECOND DEFENSE

The defendants, and each of them, answering the allegations of the Complaint, allege and say:

1. The allegations of Paragraphs 1 and 2 of the Complaint are admitted.

2. Answering the allegations of Paragraph 3 of the Complaint, the defendants deny that the amount in controversy exceeds Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs. All other allegations of Paragraph 3 are admitted.

3. Answering the allegations of Paragraph 4 of the Complaint, the defendants admit that plaintiff was employed as a policeman in the Police Department of the City of Marion, North Carolina in 1969 and that plaintiff acted in such capacity until March 31, 1972. All other

allegations of Paragraph 4 are denied.

4. Answering the allegations contained in Paragraph 5 of the Complaint, the defendants admit that the plaintiff was dismissed from his employment on March 31, 1972 by W. H. Wood, Chief of Police of the City of Marion, North Carolina, and that such dismissal was approved by the City Manager, Victor Denton. All other allegations of Paragraph 5 are denied.

5. Answering the allegations contained in Paragraph 6 of the Complaint, the defendants admit that the plaintiff, at his request, and following his discharge, was notified in writing by defendant W. H. Wood that his dismissal was due to unsatisfactory work and failure to attend training schools. All other allegations of Paragraph 6 are denied.

6. The allegations contained in Paragraph 7 of the Complaint are admitted.

7. Answering the allegations of Paragraph 8 of the Complaint, the defendants admit that plaintiff was not given a formal hearing by defendants prior to his dismissal since he did not request such a hearing and since he had been advised on several occasions that he would be dismissed if he persisted in his refusal to attend training school as was required of all officers of the Marion City Police Department.

8. The allegations contained in Paragraph 9 of the Complaint are denied.

9. The allegations contained in Paragraph 10 of the Complaint are denied.

10. The allegations contained in Paragraph 11 of the Complaint are denied.

WHEREFORE, the defendants respectfully request that the Court:

a. Dismiss the Complaint as to each and every one of the defendants named therein;

b. That the costs of this action be taxed against the plaintiff;

c. That the Court grant the defendants and each of them a trial by jury of all issues; and

d. That the Court grant the defendants such other and further relief as the Court may deem just and proper.

/s/ Charles E. Burgin
Attorney for Defendants
Charles E. Burgin
Dameron & Burgin
14 West Court Street
Marion, North Carolina
28752
Telephone: 704-652-2441

[Jurat Omitted]

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP, Plaintiff, v. W. H. WOOD, etc., et al., Defendants.	PLAINTIFF'S INTERROGATORIES TO DEFENDANTS

The defendants are hereby requested to answer under oath the following interrogatories within 30 days from the date of service hereof, pursuant to Rule 33 of the Federal Rules of Civil Procedure:

1. How many officers and uniformed patrolmen are employed by the Police Department of the City of Marion, North Carolina?

2. Give the length of time that each other officer and uniformed patrolman has been employed.

3. Does the Police Department of the City of Marion conduct training programs for newly hired policemen?

4. If the answer to the preceding interrogatory is in the affirmative, how long does the training program last and what are the duties of policemen while enrolled in the training program?

5. Does the Police Department of the City of Marion, North Carolina, have a probationary period for newly hired policemen?

6. If the answer to the preceding interrogatory is in the affirmative, how long does this probationary period last?

7. Does the Police Department of the City of Marion, North Carolina, have written contracts of employment with any officer or uniformed patrolman?

8. If the answer to the preceding interrogatory is in the affirmative, what are the terms of these employment contracts?

9. Have any uniformed patrolmen or officers been discharged by the Police Department of the City of Marion, North Carolina, since January 1, 1969? If so, how many?

10. If the answer to the preceding interrogatory is in the affirmative, for each officer or uniformed patrolman discharged, state (1) whether or not a hearing was held prior to the discharge, (2) whether or not the discharged employee was given prior warning that he

would be discharged, (3) whether or not the discharged employee was given notice in writing of the reasons for his discharge, (4) and the purported reason for the discharge.

Respectfully submitted,

/s/ Norman B. Smith
Attorney for Plaintiff
Norman B. Smith
Smith, Patterson, Follin
& Curtis
816 Southeastern Building
Greensboro, North Carolina
27401
Telephone: 919-275-8603

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP, Plaintiff, v. W. H. WOOD, Chief of Police of the City of Marion, North Carolina; VICTOR DENTON, City Manager of the City of Marion, North Carolina; and THE CITY OF MARION, NORTH CAROLINA, A Municipal Corporation, Defendants.	DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES

TO: Norman B. Smith
Attorney for Plaintiff
816 Southeastern Building
Greensboro, North Carolina 27401

The following are the answers of the defendants to the interrogatories numbered 1 through 10, direct to the defendants, to be answered pursuant to Rule 33:

ANSWER TO INTERROGATORY NUMBER 1:

Seventeen

ANSWER TO INTERROGATORY NUMBER 2:

William H. Wood ---- Since July 1, 1946
John W. Beck ------- Since November 30, 1950
Henry H. Trent ----- Since June 15, 1964
Eugene R. Dixon ---- Since January 1, 1966
Jack D. Causby ----- Since July 15, 1966
Paul G. Elliott ---- Since March 27, 1967
Silas S. Blankenship Since June 1, 1967
Charles W. Queen --- Since October 1, 1967
Tommy M. Bryant ---- Since August 1, 1969
Mildred L. Jarrett - Since August 27, 1954
Alfred A. Dillingham Since July 1, 1967
Alvin R. Hawkins --- Since July 1, 1967
Frank E. Williams -- Since September 18, 1971
Kenneth W. Ledbetter Since April 10, 1972
Dennis Barrier ----- Since April 24, 1972
Golden N. Arrowood - Since August 11, 1972

Earl Webb ---------- Since November 6, 1972

ANSWER TO INTERROGATORY NUMBER 3:

Yes.

ANSWER TO INTERROGATORY NUMBER 4:

Marion Police Department requires the officers to attend all training schools the department can send them to. The Department holds a three-hour class once a month on Basic Law Enforcement at the Marion Police Department. New Policemen work with trained officers for a while when they first go to work.

ANSWER TO INTERROGATORY NUMBER 5:

Yes.

ANSWER TO INTERROGATORY NUMBER 6:

Six Months.

ANSWER TO INTERROGATORY NUMBER 7:

No.

ANSWER TO INTERROGATORY NUMBER 8:

Not applicable.

ANSWER TO INTERROGATORY NUMBER 9:

Yes. One officer.

ANSWER TO INTERROGATORY NUMBER 10:

(1) The officer was not given a formal hearing prior to his dismissal, but was, on several occasions prior to dismissal, given informal hearings. (2) Yes, the discharged employee was advised on several occasions prior to dismissal that he would be dismissed if he persisted in his refusal to comply with the rules of the Police Department. (3) Yes, the discharged employee after dismissal, and at his request, was notified in writing of the reasons for his discharge. (4) The reason for the employee's discharge is as set forth in the letter to the em-

ployee, which letter is in the possession of the employee.

[Jurat Omitted]

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP,	]	
	]	
Plaintiff,	]	
	]	
v.	]	MOTION FOR SUMMARY JUDGMENT
	]	
W. H. WOOD, Chief of Police of the City of Marion, North Carolina; VICTOR DENTON, City Manager of the City of Marion, North Carolina; and THE CITY OF MARION, NORTH CAROLINA, A Municipal Corporation,	]	
	]	
Defendants.	]	

TO: Norman B. Smith
Attorney for Plaintiff
816 Southeastern Building
Greensboro, North Carolina 27401

The defendants, W. H. WOOD, VICTOR DENTON and THE CITY OF MARION, by CHARLES E. BURGIN, their attorney, hereby move the court to enter summary judgment for the defendants and each of them, in

accordance with the provisions of Rule 56(b) and (c) of the Rules of Civil Procedure, on the ground that the pleadings and interrogatories on file, and the affidavits hereto attached, marked Exhibits A, B, C, show that the defendants are entitled to judgment as a matter of law.

This 18th day of May, 1973.

/s/ Charles E. Burgin
Charles E. Burgin
Attorney for Defendants
14 W. Court Street
Marion, North Carolina
28752
Tele. (704) 652-2441

STATE OF NORTH CAROLINA
COUNTY OF McDOWELL

AFFIDAVIT

Victor H. Denton, first being duly sworn, deposes and says under oath:

(a) That he was City Manager of the City of Marion, North Carolina, from October 1, 1968 to November 30, 1972, and with regard to the release of Officer Dean Bishop from employment as a policeman with the City of Marion, the affiant further says:

"Chief Wood informed me several days before Dean Bishop was released that he had been having some personnel problems with Bishop for several months and that he had conferred with Bishop on one or two occasions about his attitude.

Chief Wood stated that the problems related to a poor attitude and failure to carry out orders, Chief Wood informed me

that he had discussed this matter with Bishop on one or more occasions. I informed Chief Wood that before taking any disciplinary action, he should discuss the problem areas with Bishop and make him aware of the consequences if he failed to bring his level of performance up to an acceptable manner. Later Chief Wood informed me that he would comply with this request.

A week or two after this Chief Wood informed me that Bishop was continuing to act independently of his requests and he had decided to release him. I told the the Chief in light of all he told me that I concurred with his recommendation. I accepted the Chief's invitation to talk with Bishop in front of the Chief. I informed Bishop of the Chief's decision and the fact that I concurred with his deci-

sion. Bishop stated that we were doing him a favor in releasing him, he then excused himself and left."

/s/ Victor H. Denton

[Jurat Omitted]

(Certificate of Service Omitted]

STATE OF NORTH CAROLINA

COUNTY OF McDOWELL A F F I D A V I T

BILL WOOD, first being duly sworn, deposes and says under oath:

That he is Chief of Police of the City of Marion and was acting in such capacity at the time Officer Carl D. Bishop was discharged as a city policeman.

In reference to Officer Bishop's being relieved of his duties, I had him in my office on several occasions during a six month period prior to his discharge, concerning high speed automobile chases outside the city limits, checking business establishments in the city and answering routine patrol calls.

Officer Bishop did not attend training sessions conducted by the police department and did not make plans to be ex-

cused from such sessions. Officer Bishop refused to cooperate with fellow officers and did not take orders from the officer in charge of his duty shift. Officer Bishop was the cause of low morale on the third duty shift and a verbal complaint was filed against him by Sergeant Arrowood concerning Bishop's acts of conduct which were unsuited to a police officer.

Officer Bishop told me that he had other jobs to do and to work at and that these other jobs were necessary for him to make a living for his family. When Officer Bishop was relieved of his duties, he told me that this was the best thing that had ever happened to him and that Mr. Denton, the City Manager, had done him a favor by letting him go.

Officer Bishop was relieved of his duties because of of insubordination, fail-

ure to attend training classes, and acts unsuited to a police officer. The number or nature of arrests made by Officer Bishop was not a factor in his dismissal.

/s/ Bill Wood

[Jurat Omitted]

[Certificate of Service Omitted]

STATE OF NORTH CAROLINA

COUNTY OF McDOWELL A F F I D A V I T

CAPTAIN JOHN W. BECK, first being duly sworn, deposes and says under oath:

Police Officer Carl Dean Bishop attended only one training class that I can remember that we had at City Hall. He attended only one at McDowell Technical Institute and none elsewhere.

When asked why he did not attend these training sessions, Bishop stated that he had work to do at home. Generally, Officer Bishop's attitude was to the effect that he thought he was the only man who did anything.

/s/ Captain John W. Beck

[Jurat Omitted]

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP, Plaintiff,	)	
v.	)	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
W. H. WOOD, etc., et al., Defendants.	)	

NOW COMES plaintiff in the above-entitled action and respectfully moves the Court for an order granting plaintiff summary judgment, as provided in Rule 56 of the Rules of Civil Procedure, on the ground that it appears from the record without dispute of material facts that plaintiff had a permanent position of employment with the City of Marion Police Department, and this employment was terminated by defendants involuntarily without a notice and hearing in advance, and

without the existence of undisputed acts of misconduct that would justify dismissal.

Respectfully submitted,

/s/ Norman B. Smith
Attorney for Plaintiff
Norman B. Smith
Smith, Patterson, Follin
& Curtis
816 Southeastern Building
Greensboro, North Carolina
27401
Telephone: 919-275-8603

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP, Plaintiff, v. W. H. WOOD, etc., et al., Defendants.	AFFIDAVIT OF PLAINTIFF

Carl D. Bishop, being first duly sworn, deposes and says:

1. My name is Carl D. Bishop, and I am the plaintiff in this action.

2. I have read the affidavits of Victor Denton, Bill Wood, and Captain John W. Beck, filed by defendants in this action in support of their motion for summary judgment. Much of the material contained in these affidavits is false. The purpose of this affidavit is to state

the true facts with respect to transactions and occurrences which are the subjects of the affidavits filed by defendants.

3. In Victor H. Denton's affidavit it is stated that I told Mr. Denton and Chief Wood that they were doing me a favor in releasing me from service as a policeman. This is not true. On the occasion in question I had heard that I was being dismissed. I asked for an interview with Mr. Denton to find out if this was true. Mr. Denton granted me an interview. In response to my inquiry, he told me that I was in fact being dismissed. I protested to Mr. Denton, saying, "I cannot understand why my work is unsatisfactory. I try to put all I have in my job. If every officer had put as much effort into the court system

as I have and had put as much money from fines into the local school as I have, the city would get back more money than the officers receive in pay." At this point Mr. Denton appeared angry and started to get up out of his chair. He said, "If you pursue this matter any more, it will get worse." Mr. Denton then invited me to be excused, and in obedience to the invitation I left. I had a discussion with Chief Wood outside Mr. Denton's office at this point, and I asked the chief if I could talk with Mr. Denton again. I went into Mr. Denton's office a second time, and again Mr. Denton asked me to be excused. Again, I left the office when he told me to do so. At no point did I tell Mr. Denton or Chief Wood that they were doing me a favor by dis-

McDowell Technical Institute and satisfactorily completed there a school on small arms, as part of my duties in the police department. Records of McDowell Technical Institute showing that I completed both of these courses are attached hereto and made a part hereof. I was scheduled to attend a radio technician's training course at McDowell Technical Institute. I was able to attend only one out of four of the sessions. When one of the sessions was scheduled, I was on my way to the Technical Institute when I was requested by a State Bureau of Investigation agent, Benjamin F. Wade, and State Highway Patrolman Robert C. Jones, to take part in a drug raid. Affidavits executed by Messrs. Wade and Jones establishing that I assisted them on this occasion are

attached hereto. When another one of the radio technician's training sessions was scheduled, I was extremely ill with intestinal flu at home. I was so sick that I was in the bathroom vomiting constantly the entire evening. I do not think that I could have made it to the telephone to call the police department and say that I would not be present at the course, had I thought to do so, but my mind was on my condition, and it did not occur to me to try to get in touch with the police department. When another one of the radio technician's training sessions was scheduled, I was taking a week's vacation. I was planning to attend the session and would have attended it, even though it was during my vacation, but I received word that the session was postponed. When I learned of the date to which this par-

ticular session had been postponed, it was in conflict with plans I had already made to go to Boone, North Carolina, to fill out my income tax returns, which were to have been due soon after that. I sent word to the chief of police by a fellow officer of this conflict, and the chief was informed that I would not be able to attend that particular session. I explained the reason for my absence to my superior at the police department the following day. To the best of my knowledge, I attended all other training sessions required of the Marion Police Department for its officers while I was employed by that department.

6. In Bill Wood's affidavit it is stated that I refused to cooperate with fellow officers and did not take orders from the officer in charge of my duty

shift. There is no basis for these statements. There is no occasion that I know of on which I did not cooperate fully with fellow officers in all work of the department. There is no occasion that I know of when I did not accept and carry out orders given by my supervisors in the department. It is also said in Bill Wood's affidavit that I was the cause of low morale on the third duty shift. This statement is not correct. I do not believe there was low morale on this shift, and if there was, there is no basis whatever for saying that I was the cause of it.

7. In Bill Wood's affidavit it is stated that Sergeant Arrowood filed a verbal complaint against me alleging conduct unsuited to a police officer. If Sergeant Arrowood ever did file such a verbal complaint, I never received any know-

ledge or notice of it. Sergeant Arrowood never criticized me in any way during the two years and ten months that I worked under him. All of his comments about my work and conduct were favorable. I know of no action on my part that ever could have been regarded as being unsuitable for a police officer.

8. In Bill Wood's affidavit it is stated that I told him I had other jobs to do and that these jobs were necessary for me to make a living for my family. This is not true. One week before being dismissed as an officer on the Marion Police Department, I told Chief Wood that I had sent word to him that I would have to go out of town to take care of my income tax returns on the evening that the postponed radio technician's training session was scheduled to be held (referred to in

paragraph 5 above). At that time I told Chief Wood that the tax business was something I had to see about in order to take care of my family.

/s/ Carl D. Bishop
Affiant

[Jurat Omitted]

[Certificate of Service Omitted]

-49-

State of North Carolina

Department of Community Colleges

Vocational-Technical Division

Certificate

This is to Certify that:

CARL D. BISHOP

has completed in a satisfactory manner the prescribed Course of Study in

RIOT CONTROL AND SELF DEFENSE - 12 HOURS

Issued by the

McDowell Technical Institute

13th day of December 19 71

PRESIDENT — DIRECTOR OF INSTRUCTION — DIRECTOR OF EXTENSION — INSTRUCTOR

-50-

State of North Carolina

Department of Community Colleges

Vocational-Technical Division

Certificate

This is to Certify that:

DEAN BISHOP

has completed in a satisfactory manner the prescribed Course of Study in

POLICE FIRE ARMS TRAINING

Issued by the

McDowell Technical Institute

26 day of September 1969

PRESIDENT — DIRECTOR OF INSTRUCTION — DIRECTOR OF EXTENSION — INSTRUCTOR

-51-

State of North Carolina

Department of Community Colleges

Vocational-Technical Division

Certificate

This is to Certify that:

DEAN BISHOP

has completed in a satisfactory manner the prescribed Course of Study in

ADVANCED FIREARMS TRAINING

Issued by the

McDowell Technical Institute

5 day of Nov. 19 69

PRESIDENT DIRECTOR OF INSTRUCTION DIRECTOR OF EXTENSION INSTRUCTOR

-52-

State of North Carolina

Department of Community Colleges

Vocational-Technical Division

Certificate

This is to Certify that:

CARL BISHOP

has completed in a satisfactory manner the prescribed Course of Study in

SMALL FIREARMS TRAINING

Issued by the

McDowell Technical Institute

14 day of May 1970

PRESIDENT DIRECTOR OF INSTRUCTION DIRECTOR OF EXTENSION INSTRUCTOR

P. O. Box 10603
Biltmore Station
Asheville, N. C.

August 29, 1972

To Whom It May Concern:

On March 29, 1972 this writer was assisted by Marion Policeman, Dean Bishop.
Mr. Bishop was in the company of North Carolina State Highway Patrolman, Robert Jones.
Both Mr. Bishop and Patrolman Jones assisted this writer in a search of an out of state vehicle for narcotics.
Arrest were made, and this writer requested that Mr. Bishop drive the seized vehicle into Marion, N. C.
Mr. Bishop did so and futher aided this writer later developments of the case

during the remainder of the night.

/s/ Benjamin F. Wade

Benjamin F. Wade
Special Agent
NC SBI

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP, Plaintiff, v. W. H. WOOD, etc., et al., Defendants.	AFFIDAVIT OF FRANK WILLIAMS

Frank Williams, being first duly sworn, deposes and says:

1. My name is Frank Williams. I am a resident of Marion, North Carolina. I am a policeman in the employ of the Marion, North Carolina, Police Department, and I have been employed in this position since September, 1971.

2. I am well acquainted with Carl D. Bishop, who was employed by the Marion Police Department as a patrolman from June

9, 1969, to March 31, 1972. I have served with Mr. Bishop in our official capacities on a number of occasions. I have oberved Mr. Bishop executing the duties of a policeman in a variety of situations. I feel that I am well able to assess Mr. Bishop's professional training, qualifications, attitude, and performance.

3. At all times Carl Bishop cooperated fully with fellow officers. He was easy to get along with, and well liked by all of his contemporaries. I cannot think of a single occasion when Mr. Bishop did not provide cooperation and assistance, when requested to do so, or when he saw the need.

4. While employed by the department, Carl Bishop always obeyed orders given by his supervisors. To my knowledge, there

is no instance when Mr. Bishop failed to follow an order of which he had knowledge, or attempted to evade or act contrary to the spirit of an order or other departmental directive.

5. Low morale did not prevail in the department or on any police shift when Mr. Bishop was employed as a patrolman. Mr. Bishop contributed to and helped build high morale among his fellow officers.

6. In all respects Carl Bishop conducted himself professionally while he was employed by the Marion Police Department. He was well suited for police work. He possessed and used the necessary training and experience to carry out his duties in an effective manner. He operated very efficiently, and he had one of the highest arrest and conviction records of

any patrolman on the police force. Mr. Bishop was courteous in his dealings with members of the public; in no instance was he arrogant or a bully.

/s/ Frank Williams
Affiant

[Jurat Omitted]

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF
	)	TOMMY BRYANT
W. H. WOOD, etc., et al.,	)	
	)	
	)	
Defendants.	)	

Tommy Bryant, being first duly sworn, deposes and says:

1. My name is Tommy Bryant. I am a resident of Marion, North Carolina. I am a patrolman in the employ of the Marion, North Carolina, Police Department, and I have been employed in this position since July, 1969.

2. I am well acquainted with Carl D. Bishop, who was employed by the Marion Police Department as a patrolman from June

9, 1969, to March 31, 1972. I have served with Mr. Bishop in our official capacities on a number of occasions. I have observed Mr. Bishop executing the duties of a policeman in a variety of situations. I feel that I am well able to assess Mr. Bishop's professional training, qualifications, attitude, and performance.

3. At all times Carl Bishop cooperated fully with fellow officers. He was easy to get along with, and well liked by all of his contemporaries. I cannot think of a single occasion when Mr. Bishop did not provide cooperation and assistance, when requested to do so, or when he saw the need.

4. While employed by the department, Carl Bishop always obeyed orders given by

his supervisors. To my knowledge, there is no instance when Mr. Bishop failed to follow an order of which he had knowledge, or attempted to evade or act contrary to the spirit of an order or other departmental directive.

5. Low morale did not prevail in the department or on any police shift when Mr. Bishop was employed as a patrolman. Mr. Bishop contributed to and helped build high morale among his fellow officers.

6. In all respects, Carl Bishop conducted himself professionally while he was employed by the Marion Police Department. He was well suited for police work. He possessed and used the necessary training and experience to carry out his duties in an effective manner. He operated very efficiently, and he had one of the highest arrest and conviction records of any pa-

trolman on the police force. Mr. Bishop was courteous in his dealings with members of the public; in no instance was he arrogant or a bully.

/s/ Tommy Bryant
Affiant

[Jurat Omitted]

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUMMARY OF CITA-
	)	TIONS ISSUED BY
W. H. WOOD, etc., et al.,	)	EMPLOYEES OF MA-
	)	RION POLICE DE-
	)	PARTMENT
Defendants.	)	

From the Marion Police Department arrest book, one of defendants' official records, a copy of which is attached hereto and hereby submitted to the Court, plaintiff offers the following comparison of the number of arrests made by him with the number of arrests made by other employees of the department during the period of plaintiff's employment, June 9, 1969, to March 31, 1972:

Officer	Number of Arrests
Bishop (plaintiff)	336
Causby	247
Blankenship	111
Bryant	102
Trent	99
Williams	79
Arrowood	63
Queen	63
Elliott	55
Beck	33
Dixon	28
Roper	14
Wood	6
Fostner	5
Dillingham	3

Respectfully submitted,

/s/ Norman B. Smith
Attorney for Plaintiff
Norman B. Smith
Smith, Patterson, Follin
& Curtis
816 Southeastern Building
Greensboro, North Carolina
27401
Telephone: 919-275-8603

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP, Plaintiff,	)	
v.	)	ORDER
W. H. WOOD, Chief of Police of the City of Marion, North Carolina, and others, Defendants.	)	

THIS MATTER is before the Court upon Motions for Summary Judgment filed by the plaintiff and the defendants; and

It appearing to the Court that the defendants' Motion should be allowed for the reasons set forth in the Memorandum of Decision filed simultaneously herewith,

IT IS, THEREFORE, ORDERED that the defendants' Motion for Summary Judgment, be, and the same is hereby allowed, and plaintiff's action is hereby dismissed.

This the 29th day of August, 1973.

/s/ Woodrow W. Jones
Chief Judge, United States
District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
Civil No. SH-72-78

CARL D. BISHOP, Plaintiff,	)	
v.	)	NOTICE OF APPEAL
W. H. WOOD, etc., et al., Defendants.	)	

NOW COMES Carl D. Bishop, the plaintiff in this action, and gives notice of appeal to the United States Court of Appeals for the Fourth Circuit, from the order and judgment entered August 29, 1973.

/s/ Norman B. Smith
Attorney for Plaintiff
Norman B. Smith
Smith, Patterson, Follin
& Curtis
816 Southeastern Building
Greensboro, North Carolina
27401
Telephone: 919-275-8603

DECISIONS OF THE LOWER COURTS

The initial decision of the United States Court of Appeals for the Fourth Circuit is set out at pages 25 - 29 of the Petition for Certiorari. The decision on rehearing by the United States Court of Appeals for the Fourth Circuit is set out at page 30 of the Petition for Certiorari. The decision of the United States District Court for the Western District of North Carolina is set out at pages 12 - 24 of the Petition for Certiorari.